

**DEPARTMENT OF STATE REVENUE**

**LETTER OF FINDINGS NUMBER: 02-0040P**

**Use Tax**

**Calendar Years 1998, 1999, and 2000**

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**ISSUE(S)**

I. **Tax Administration** – Penalty

**Authority:** IC 6-8.1-10-2.1(d); 45 IAC 15-11-2

Taxpayer protests the penalty assessed.

**STATEMENT OF FACTS**

Taxpayer is an out-of-state corporation that leases space in Indiana where a showroom for its lines of wood doors and windows is displayed and sales orders are written. Taxpayer was previously audited on April 22, 1992. At audit, it was determined that the taxpayer failed to self assess and remit use tax for clearly taxable fixed assets purchases. Taxpayer had no use tax accrual system in place.

I. **Tax Administration** – Penalty

**DISCUSSION**

Taxpayer protests the penalty assessed and states that it submitted the tax payment to the State of Illinois instead of Indiana. It acted in good faith in paying the tax and does not feel it should be penalized for an honest error.

45 IAC 15-11-2(b) states, "Negligence, on behalf of the taxpayer is defined as the failure to use such reasonable care, caution, or diligence as would be expected of an ordinary reasonable taxpayer. Negligence would result from a taxpayer's carelessness, thoughtlessness, disregard or inattention to duties placed upon the taxpayer by the Indiana code or department regulations. Ignorance of the listed tax laws, rules and/or regulations is treated as negligence. Further, failure

to read and follow instructions provided by the department is treated as negligence. Negligence shall be determined on a case by case basis according to the facts and circumstances of each taxpayer.”

Taxpayer failed to self assess and remit use tax on one hundred percent (100%) of its taxable fixed assets and has not provided reasonable cause to allow the department to waive the penalty.

**FINDING**

Taxpayer’s protest is denied.